REQUEST FOR PROPOSALS (RFP)

SR 85 LANDFILL GAS

RFP 17-SWDD-087

PROCUREMENT SCHEDULE:
Dates may be subject to change.

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<th>ACTIVITY (All times are local Phoenix time.)</th>
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<tr>
<td>RFP Advertisement</td>
<td>March 3, 2017</td>
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<tr>
<td>Pre-Proposal Meeting (9:00 a.m.)</td>
<td>March 16, 2017</td>
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<tr>
<td>Pre-Proposal Site Visit (1:00 p.m.)</td>
<td>March 16, 2017</td>
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<tr>
<td>Submittal of Written Questions (3:00 p.m.)</td>
<td>March 23, 2017</td>
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<tr>
<td>Proposal Deadline (1:00 p.m.)</td>
<td>April 5, 2017</td>
</tr>
<tr>
<td>Shortlist Notification/Interviews</td>
<td>Week of May 9, 2017</td>
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<tr>
<td>Award Recommendation to Phoenix City Council</td>
<td>June 2017</td>
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Submit Proposals and Requests for Alternate Formats to:
City of Phoenix
Public Works Department (PWD)
200 West Washington Street, 7th Floor
Phoenix, Arizona 85003-1611
Attn: Marsha Chavez, Procurement Officer

Telephone: 602-256-5634 (AZ Relay Friendly)
marsha.chavez@phoenix.gov
www.phoenix.gov/solicitations

This RFP does not commit the City to award any contract.
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SECTION I – BACKGROUND

A. Background and Site Description

The City of Phoenix invites sealed proposals from landfill gas-to-energy (LFGTE) developers to utilize landfill gas from the SR85 Landfill located at 28361 West Patterson Road Buckeye, AZ 85326; west of State Route 85 (SR85), south of Patterson Road in Buckeye, Maricopa County, Arizona (Appendix I). Proposals are being accepted for the sale and beneficial utilization of landfill gas from this facility to generate revenue for the City.

The SR85 Landfill has accepted Municipal Solid Waste (MSW) for disposal since January 2, 2006. The site encompasses roughly 2652 acres of which approximately 368 acres, to be known as Cells 1-3, are currently permitted for landfilling.

As of December 2016, the existing waste in place is estimated to be ten (10) million tons. Two of the four planned phases of Cell 1 have been closed with final cover; this is approximately 22 acres of the approximately 94 acres of Cell 1.

B. Site Interaction

The portion of land designated for this project will be leased to the selected proposer, subject to the terms and conditions of the final contract. Any landfill gas processing equipment to be added by the proposer is to remain inside the 150-foot utility corridor west of the flare station and in addition be outside the utility easement (varies in width from 20 to 27 feet near the flare station, see Appendix I). Any response to this RFP must acknowledge the area designated for the LFGTE project or propose a different area, listing possible adjustments to the plan. Any equipment installation will require coordination and cooperation with the City Solid Waste Diversion and Disposal Division. The City employs a security guard at the landfill after hours. Responses should consider security of their equipment. In addition, respondents should propose educational components for the LFGTE facility in order to educate the public visiting the facility related to landfill gas to energy activities.

C. Gas Collection System

Landfill gas monitoring probes are located around the perimeter of each landfill cell as a mechanism to ensure landfill gas is not migrating off the property. The landfill gas collection system is a combination of horizontal landfill gas collectors layered approximately every 30 feet of waste and vertical landfill gas extraction wells designed and placed after the closure of each landfill phase. As of December 2016, there are 43 horizontal collectors and five (5) vertical landfill gas extraction wells. Appendix F includes landfill gas collection and control system drawings.

D. Flare Station

There is one flare station. The flare station has three enclosed Perennial Energy, Inc. flares with the following capacities: flare 1 is 18 million British thermal units per hour (MMBtu/hr) and 1,500 standard cubic feet per minute (SCFM), flare 2 is 42 MMBtu/hr and 2,100 SCFM and flare 3 is 40 MMBtu/hr and 2,000 SCFM. The Flare station is located south of Cell 1. The flare station had an average gas flow of 841 standard cubic feet per minute and an average methane concentration of 53.7 percent in 2016, refer to Attachment G. The City does not guarantee flow or methane concentrations at these levels. The measurements that follow represent field measurements only. It can be assumed that the landfill gas will be available at the flare station at a constant pressure.
Landfill gas composition results from July 2016 are included in Attachment H and summarized here:

<table>
<thead>
<tr>
<th>Component</th>
<th>SR 85 LFG Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methane (CH4)</td>
<td>54.7%</td>
</tr>
<tr>
<td>Carbon Dioxide (CO2)</td>
<td>43.9%</td>
</tr>
<tr>
<td>Nitrogen (N2)</td>
<td>1.07%</td>
</tr>
<tr>
<td>Oxygen (O2)</td>
<td>0.272%</td>
</tr>
<tr>
<td>Hydrogen Sulfide (H2S)</td>
<td>100 ppmv</td>
</tr>
<tr>
<td>Siloxanes/Volatile Organic Compounds</td>
<td>10,745 ppbv</td>
</tr>
</tbody>
</table>

E. Gas Well / Flare Station Monitoring Data

Refer to the landfill gas collection system plans, Attachment F, available for download on the City website (www.phoenix.gov/solicitations), to determine the location of each well. For additional data on gas well or flares, contact the Public Works Department, Procurement Services Division, at (602) 256-5634 to make an appointment.

F. Additional Data

Additional information available regarding the design/construction of the existing gas collection system can be obtained from Central Records located at Phoenix City Hall, 3rd floor.

SECTION II – SCOPE OF SERVICES

A. Project Costs

Proposers are expected to assume all costs associated with this project such as:

- Design, construction, and future operation and maintenance of additional landfill gas to energy infrastructure for the project.
- Securing payment and performance bonds.
- Securing/renewing the required permits.
- Negotiating biogas sales agreements.
- Negotiating renewable energy credits/certificates.
- Negotiating green/environmental credits/certificates.
- Negotiating utility gas pipeline access agreements.

The City will be responsible for operating and maintaining the existing gas collection system with strict compliance with environmental regulations. The City will also be responsible for design, construction, and operation and maintenance of the landfill. The proposal must acknowledge that collecting landfill gas to meet environmental regulations takes precedence over collecting landfill gas for commercial use, in particular if the two are in conflict. The City is expecting to generate revenue in exchange for the landfill gas. Other potential benefits to the City such as educational opportunities for the City will be considered if offered in the proposal.
B. Project Aspects

- The Proposal must identify all aspects of the project, including but not limited to:
  - Project Participants, Proposed Agreements, and Assigned Responsibilities;
  - Project Extent;
  - Project Design, Construction, and Maintenance Responsibilities;
  - Schedule to Complete Project and Term of Project;
  - Project Benefits to the City;
  - On-Site Land Requirements; and
  - Project Financing - including all assumptions and a complete project proforma identifying revenues based on existing conditions and expenditures.

The City anticipates that the proposed project will include the landfill gas collected from Cell 1 based on the existing gas flows and methane contents. Proposers should include a plan that acknowledges the landfill active status and future landfill and landfill gas growth outlook.

C. Project Compatibility with SR85 Operations and Regulatory Compliance

The landfill gas purchase and associated project must be developed and operated to maintain regulatory compliance with applicable laws at all times. The City will retain landfill and landfill gas-monitoring and gas collection system operations and maintenance to ensure regulatory compliance is maintained at all times.

The City will require routine LFG operation of the flare station for up to 48 hours per month, which may be intermittent or continuous, for the purpose to ensure functionality of flare station components. Additional operation of the flare for non-routine reasons on an infrequent basis required for compliance with regulatory requirements will be needed, for example required flare testing every five years. A mutually agreed upon schedule will be discussed during final contract negotiations.

D. Project Restrictions

The site location has several unique features to be aware of:

- Arizona Public Service easement as depicted in Appendix I.
- El Paso Natural Gas pipeline is approximately 2 miles north of the facility.
- Southwest Gas pipeline is to the north of the facility along Patterson Road.
- A 2 million gallon, 1.5-acre construction water pond.
- A groundwater well adjacent to the construction water pond.

SECTION III – INTRODUCTION

A. Overview

1. The City of Phoenix “City” invites sealed proposals from qualified landfill gas to energy (LFGTE) developers for entering into a Landfill Gas Purchase Agreement and a Site Lease Agreement for a landfill gas utilization project located at the SR85 Landfill. The SR85 Landfill is located at 28361 West Patterson Road, Buckeye, AZ 85326; west of State Route 85 (SR 85), south of Patterson Road in Buckeye, Maricopa County, Arizona. The SR85 Landfill is an active landfill with approximately ten (10) million tons of municipal solid waste since opening in January 2006.

2. The SR85 Landfill has a landfill gas collection and control system. In 2016, the average methane content was 53.7% at an average flow rate of 841 standard cubic feet per minute. The City makes no guarantee as to the landfill gas flow rate, methane concentration, or landfill gas composition. The landfill is currently
permitted for a waste disposal footprint of 368 acres, of which approximately 94 acres are currently in operation. The project scope includes the purchase of the landfill gas, and any future design, construction, operation and maintenance of any Proposer landfill gas processing system(s) desired by the Proposer, with strict compliance to environmental regulations, and a lease agreement. The contract term will be for a twenty (20) year period, commencing on or about August 1, 2017, in accordance with the specifications and provisions contained herein.

3. For the purposes of this information, the term “Proposer” is used to identify each firm that intends to or does participate in this City procurement and the information required of the Proposer as part of the procurement process. The “Selected Proposer” refers to information the Proposer will need to provide after the selection process is complete and the firm has been awarded a contract.

B. Minimum Qualifications

1. Each Proposer and its proposed Facility Manager must have a minimum of five-years of experience operating LFGTE facilities, negotiating utility agreements, and marketing/selling renewable energy products generated at those facilities.

2. Any Proposer, member, or affiliate of a Proposer that currently contracts with the City must be in good standing for its submittal to be considered responsive. For the purpose of this Request for Proposals (RFP), good standing refers to compliance with all contractual provisions, including its payment of financial obligations.

3. Each Proposer must demonstrate in its proposal that it and its Facility Manager meet the minimum qualifications or the proposal will be disqualified as non-responsive. Proposers may not use a subconsultant’s or subcontractor’s experience to meet the minimum qualifications.

4. If required by law for the operation of the business or work related to this Proposal, Proposer must possess all valid certificates and/or licenses as required by federal, state and local laws at the time of submittal.

C. Contract Term and Contractual Relationship

The initial contract term will be for twenty years with five, two-year renewal options, for a total of thirty consecutive years, to be exercised at the sole discretion of the Public Works Director.

D. Pre-Proposal Meeting and Site Tour

Proposers are strongly encouraged to attend the pre-proposal meeting at the date and time listed on the cover page. This meeting will be located at the City of Phoenix Lower Council Chambers, 200 W. Washington Street, Phoenix, Arizona 85003. Please email marsha.chavez@phoenix.gov to register for this meeting.

The pre-proposal meeting will be followed by an optional site visit at 1:00 p.m., which is located at 28361 W. Patterson Road, Buckeye, Arizona 85326.

E. Proposer Inquiries

1. Proposers are advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not be grounds for waiving any portion of the RFP or subsequent contract.

2. For more information or a copy of this publication in an alternate format, contact the Contract Specialist (listed below) – TTY: 7-1-1 Friendly. Requests will only be honored if made within the first week of the advertising period.

3. All questions regarding the information or instructions in this RFP must be submitted in writing to marsha.chavez@phoenix.gov no later than the deadline noted on the cover page. All written questions will be responded to in writing and posted at phoenix.gov/solicitations on the dated listed on the cover page.
F. Changes to the RFP

1. Changes to this RFP will be issued in writing as an addendum and posted at phoenix.gov/solicitations. The City shall not be responsible for any oral instructions given by any City employees or officials regarding RFP instructions, specifications, or documents.

2. Although registered pre-proposal meeting attendees, and Proposers who request such notification in writing, will be notified by email when documents related to this RFP are available at phoenix.gov/solicitations, Proposers are responsible for obtaining any and all information posted on the website.

G. Guarantee Instruments

1. Proposal Guarantee
   a. The Original Proposal must be accompanied by a Bid Bond in the amount of $25,000. Each Proposer's proposal guarantee must be submitted in a separately sealed envelope along with the proposal.
   b. Proposal guarantees of unsuccessful Proposers will be returned via certified mail immediately after the business opportunity has been formally awarded by the Phoenix City Council or after all proposals are rejected. In the event a short listing process is used, the proposal guarantees of the Proposers not selected for interviews will be returned via certified mail immediately following the short-listing process.
   c. After contract execution, the Selected Proposer’s proposal guarantee will be returned. If the successful Proposer fails to execute the contract in a timely manner, the proposal guarantee will be forfeited as liquidated damages.

SECTION IV – PROPOSAL INSTRUCTIONS

A. Proposal Format
   1. Page Size: Letter Size
   3. Font: 10 point Arial
   4. Compiled in a loose-leaf three-ring binder
   5. Tabs:
      a. Tab 1 – Business Plan
      b. Tab 2 – Compensation to the City of Phoenix (A hard copy of the compensation should only be included in the original, not in any of the copies provided.)
      c. Tab 3 – Developer’s Qualifications
      d. Tab 4 – Schedule
      e. Tab 5 – Exceptions to the Contract Terms Requirements
      f. Tab 6 – Attestation (Notarized Affidavit)
      g. Appendices
B. Delivery of Proposal

1. Proposals must be delivered to the City by the deadline and at the location designated on the cover page. Proposals received after the deadline shall be deemed non-responsive and will be rejected.

2. Each Proposer must submit the following in a sealed package marked with the Proposer’s name and the title and number of this RFP:
   - 1 – Original Signed Proposal (Include Compensation and Financial Status of the Firm to the City of Phoenix in this copy only.)
   - 7 – Copies of the proposal
   - 1 – Electronic Copy of the proposal in pdf format on a CD or thumb drive
   - 1 – Proposal Guarantee as specified in this RFP (include in the Original Proposal only)

C. Grounds for Disqualification

Please be advised that the following will be grounds for disqualification, and will be strictly enforced:

1. Proposals that do not follow the specified format, are incomplete, obscure, conditional, or contain additions not requested, exceptions to material provisions, or irregularities of any kind, that may be deemed non-responsive

2. Receipt of submittal after the specified cut-off date and time

3. Too few copies of the submittal

4. Deposit of submittal in the wrong location

5. Violation of the Transparency Policy contained in this RFP

SECTION V – PROPOSAL EVALUATION

The Procurement Officer will perform an administrative review of proposals for responsiveness. This review will focus on accurate and complete submission of proposals based on the RFP requirements. The City reserves the sole right to determine the responsiveness of proposals.

A. Evaluation Process

1. The Public Works Department (PWD) Director will appoint an Evaluation Panel to review the proposals according to the evaluation criteria as set forth in this RFP, except that the Compensation and Financial Status of the Firm will be appointed to a separate panel, the Financial Evaluation Panel.

2. Each evaluation panel member will independently score the proposals. The Evaluation Panel will then meet with the Financial Evaluation Panel to review findings from both panels. The panel members’ scores will then be added and an average score will be used to determine the most qualified Proposers, also referred to as “short-listed.”

3. The evaluation panel may select a Proposer based on the evaluation of the materials submitted by the deadline, or may interview the short-listed Proposers. Notifications will be sent to each Proposer regarding the status of the proposal review process.

4. In the event that interviews are conducted, the short-listed Proposers, will be sent an invitation to interview. Notifications will be sent to each short-listed Proposer regarding the status of the interview process.

5. The City will enter into negotiations with the Selected Proposer and execute a contract upon completion of negotiation of fees and contract terms for City Council approval.
6. The City reserves the right to enter into contract negotiations with Proposers other than the Selected Proposer, in the event the City and Selected Proposer are unable to agree on fees and contract terms.

7. The City reserves the right to refuse to select any Proposers under this RFP and advertise again, in the event that the City determines that no Proposers benefit the City.

B. Evaluation Criteria

The evaluation panel will review the proposal. All responsive and responsible proposals will be evaluated based on the following criteria, with an overall maximum of 1,000 points.

1. Business Plan (0-350 points)

Developers will describe the project (or projects) they expect to develop in response to this RFP, and if appropriate an alternative project (or projects) to the primary project. Proposer may submit multiple compensation scenarios, each limited to ten pages. The description should as a minimum identify:

- LFGTE Technology Employed;
- LFGTE Facility Design Capacity;
- Site Size/Dimensions & Proposed Facility Layout;
- Expected 20-Year, Year-by-Year LFG Consumption and Energy Production; and
- Air Emissions and Air Permitting Strategy

2. Compensation to the City of Phoenix (0-300 points)

a. Developer must include proposed compensation terms for royalty payments, fixed percentage of gross revenue or fixed monthly payment. Developer can submit any compensation approach, as long as the calculation methodology is transparent, verifiable, and reasonably uncomplicated. Developer should also indicate whether compensation proposed includes the sharing of any tax incentives, tax benefits, renewable energy certificates available due to the characterization of LFG as a renewable energy resource.

b. The Proposer may submit multiple financial offerings. Each proposed compensation should include all assumptions and a complete project proforma identifying revenues and expenditures. This part of the proposal is not page limited. In order to evaluate offers on a comparable basis, Developers must calculate the Net Present Value of a 20-year revenue stream (beginning in 2018), assuming LFG flows equal to no greater than the proposed LFGTE facility’s inlet capacity, or in the case of high-Btu without nitrogen removal, the above model results less 20 percent. Developers should assume a discount rate of 5%. All other assumptions should be provided with the NPV calculation.

c. The City will accept the Developer’s assumptions for the value of energy in the revenue stream projection, subject to the following:

1) In the case of medium-Btu projects, a maximum of $3.00/MMBtu, plus an escalator of 3.0 percent per year.

2) In the case of electric power, the Developer’s expected power sales rate will be accepted, subject to a justification as to why the rate is reasonable, given current and expected market conditions. If the City feels that the Developer’s justification is not reasonable, the City will apply its own rate; and

3) In the case of high-Btu projects, the City realizes that the value of renewable identification numbers (RINs) and low carbon fuel standard (LCFS) credits are volatile, and their continuation is somewhat uncertain in the long term. Developers should propose RINs/LCFS value estimates over the project life. Include justification for values chosen. Developers should provide their forecast of the energy value from 2018 forward, and provide an explanation for that forecast.
Unless otherwise convinced appropriate, however, the City will run and evaluation of high-Btu compensation, using the Developer-supplied compensation formula, under three energy value scenarios:

Scenario 1 – Total energy value of $32/MMBtu for 2018 through 2023, and $22/MMBtu, plus three percent per year thereafter; and

Scenario 2 – Total energy value of $32/MMBtu for 2018 through 2023, and $32/MMBtu, plus three percent per year thereafter; and

Scenario 3 – Total energy value of $22/MMBtu for 2018 through 2022, and $8/MMBtu, plus three percent per year thereafter; and

The Developer must provide an initial proposed term sheet for City’s consideration. The document should be included as an appendix to the proposal.

3. **Developer’s Qualifications** (0-250 points)

The Developer’s will provide background information on the firm, including: years in business; total annual revenue; organization structure; experience of key personnel; and financial status of firm.

Developer will identify and describe all operating or recently shut down (within the last five years) LFGTE facilities owned and/or operated by the Developer. The information should include dates of operation, size, technology, location, energy purchaser and landfill owner. Developer will provide detailed description for three to five operating LFGTE projects that the Developer feels best represent the Developer experience relevant to this RFP. The following information shall be provided for these projects:

- Project name and location;
- Project type, facility description, and size;
- Landfill owner and energy purchaser;
- Date of commencement of operation, project availability (uptime), and capacity factor. Discuss reasons for the inability to meet availability and capacity factor targets, if not achieved;
- Identify environmental compliance issues, if any;
- Arrangement for operation/maintenance of the GCCS; and
- Form of compensation to the landfill owner.

Include the following references that the City may contact for each listed project: a contact person at the host landfill or facility and their contact information, and a contact person for the energy purchaser and their contact information.

The Developer will identify any of the Developer’s LFGTE projects that have terminated operation within the last 10 years, prior to expiration of their LFG purchase agreements, and the reasons why operation was terminated. The Developer will identify any LFGTE project where, in the last ten years, the Developer was awarded the LFG purchase rights and it took longer than three years to bring the LFGTE project online, and/or where LFG purchase rights agreements were terminated due to failure to bring an LFGTE project online in a timely manner (or for any other reasons).

**With the Original Proposal, the Proposer will include a Financial Status of the firm which will be rated as Accepted or Not Accepted.**

**Financial Status of Firm** - Provide the following information from appropriate entities as listed below. Submit one copy in a separate sealed envelope marked “Confidential”. The City reserves the right to request such
financial information from any member of the Offeror’s team if such a request is determined to be in the best interest of the City.

1) Annual Audited financial reports for the most recent two years,

2) Or the most recent form 10-K and Form 10-Q filed with the Securities and Exchange Commission ("SEC") for the most recent two years,

3) Or if the respondent is not regulated by the SEC then the most recent quarterly financial report prepared internally approved and signed by an officer of the company for the most recent two years.

4) Describe any material historical or anticipated changes in financial position of the Offeror including mergers, acquisitions, takeovers, and or divestitures.

5) List and briefly describe any threatened, pending or past legal proceeding and judgment or any contingent liabilities in which the Offeror is a party that would adversely affect its ability to honor contractual commitments to the city.

6) Has the Offeror failed to complete any contract or has any contract been terminated due to alleged poor performance and or defaults. If so, provide explanation.

4. **Schedule** (0-100 points)

The Developer will provide an expected project development schedule, expressed in months after notification of award. As a minimum, the Developer should show early completion dates and late completion dates for the following key milestones:

a. Execution of a LFG Purchase Agreement

b. Submittal of Permit Applications;

c. Execution of Energy Sales Agreement;

d. Commencement of Construction; and

e. Initiation of Commercial Operation

The City will want to reserve the right to terminate the Agreement for the Developer’s failure to meet any scheduled milestones specified by the Developer. The Developer can offer alternatives to termination in the proposal (i.e., per day delay payments to the City).

**SECTION VI – GENERAL TERMS AND CONDITIONS OF THE PROPOSAL**

A. **Transparency Policy**

1. Beginning on the date this RFP is issued and until the date the contract is awarded or this RFP is withdrawn, all persons or entities that respond to this RFP, including their employees, agents, representatives, proposed partners, subconsultants, subcontractors, joint ventures, members, or any of their lobbyists and attorneys (collectively, the Proposer), will refrain from any direct or indirect contact with any person (other than the designated procurement officer) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department Heads, the Mayor and other members of the Phoenix City Council. As long as this RFP is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to this RFP.
2. A Proposer may discuss its proposal or this RFP with the Mayor and/or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer identified on page 1, conducted in person at 200 West Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

3. With respect to the selection of the successful Proposer, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Heads (or representatives) to the proposal evaluation panel or procurement authority must be provided in writing to all prospective Proposers.

4. This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. Proposers that violate this policy shall be disqualified.

B. Materials Submitted

All materials submitted by Proposers shall become the property of the City and become a matter of public record available for review pursuant to Arizona law. Each Proposer shall mark any information submitted as part of its proposal that the Proposer deems confidential or proprietary (collectively Confidential Information). If the City receives a request to review or disclose such Confidential Information, the City will provide the Proposer written notice of the request to allow the Proposer the opportunity to obtain a court order to prevent the disclosure or review of such Confidential Information. The Proposer must obtain and deliver to the Procurement Officer a court order within seven calendar days of the date of the City's written notice. If no court order is issued and received by the Procurement Officer within the 7-day period, the City may disclose or allow the review of such Confidential Information. If a Proposer intends to seek a Court Order to shield its Confidential Information, the protest period will be extended seven calendar days to allow for this process.

C. Award Recommendation

Award recommendations will be posted at phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations. On the day the City posts the award recommendation, the procurement file for this RFP will be available for Proposers and the public to review. The procurement file constitutes all proposals, the RFP and all addenda, advertising documents, agendas, meeting minutes, presentations (if any), signed conflict of interest statements by evaluation panel members, and evaluation panel consensus scoring.

D. Negotiations

1. Upon receipt of an evaluation panel’s recommendation, the City will appoint a negotiations team who may negotiate business terms with a Proposer. The commencement of negotiations does not commit the City to accept all of the terms of the proposal and negotiations may be terminated by the City at any time. These negotiations may result in minor or material changes to the proposal. Successful negotiations will result in an award recommendation to the City Council and a “Letter of Intent” stating the City’s intent to enter into a contract with the recommended Proposer on specified business terms. Negotiated business terms will be subject to City Council approval. Following required approvals, City-drafted contracts addressing business terms and performance benchmarks will be entered into between the parties.

2. The City reserves the right to reject, in whole or in part, any or all proposals. The terms and conditions of any contract resulting from this RFP process are subject to approval by the Phoenix City Council.

E. City’s Reservation of Rights

The City reserves the right to take any course of action the City deems appropriate at the City’s sole and absolute discretion, which may include:

1. Waiving any defects or informalities in any proposal or proposing procedure;
2. Accepting or rejecting any or all proposals or any part of any or all proposals;
3. Canceling the RFP in part or in its entirety;
4. Reissuing the RFP with or without modification;
5. Extending the deadline for proposals; and/or
6. Requesting additional information from any or all Proposers.

F. Right to Disqualify

The City reserves the right to disqualify any Proposer who fails to provide information or data requested herein or who provides materially inaccurate or misleading information or data. The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposals submitted or any other data available to the City. This disqualification is at the sole discretion of the City. By submission of a proposal hereunder, the Proposer waives any right to object now or at any future time, before any body or agency, including but not limited to, the City Council or any court, as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City.

G. Protest Process

1. A Proposer who submits a proposal that is disqualified may challenge the disqualification by filing a protest within seven calendar days of the date the City emails the notice of disqualification.
2. An unsuccessful Proposer may challenge an award recommendation by filing a protest within seven calendar days after the award recommendation has been posted at phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations. Proposers that have had their proposals disqualified may not protest an award recommendation.
3. All protests must be in writing, filed with the Procurement Officer listed on the cover page, and include all of the following:
   a. Name and number of the RFP challenged;
   b. Name, address and telephone number of the Protester;
   c. Detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
   d. Form of relief requested; and
   e. The signature of the protester or its legal representative.
4. The PWD Director, or the Director’s designee, will not review any supplements or amendments to a Proposer’s original protest or any additional protests submitted by the same Proposer. The PWD Director, or the Director’s designee, will issue a written decision within a reasonable period of the protest filing. The Procurement Officer may provide copies of the protest and the written decision to the Proposer recommended for contract award.

H. Preparation Costs

Under no circumstance will the City be responsible for any costs incurred by anyone in: 1) responding to this RFP; 2) in any subsequent follow up to the proposal; or 3) in any subsequent negotiations of a contract.

I. Additional Investigations

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Proposer submitting a proposal, including, without limitation, information provided by former employees and/or creditors.

J. Proposer Certification and Affidavit

1. By submitting a proposal, each Proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a contract to any employee, official or current contracting consultant of the City. Any Proposer unable to comply with any required certifications may be disqualified.
2. In compliance with A.R.S. §§ 1-501 and -502, the City shall require any successful Proposer that submits its proposal as a sole proprietorship or as an individual to complete the Affidavit of Lawful Presence prior to the award of any contract resulting from this process.

K. Covenant Against Contingent Fees Paid to Proposer

By submitting a proposal, the Proposer and each member of the development team certifies that they have not employed nor retained any person or company, other than a member of the development team or a bona fide employee working solely for the Proposer or any member of the development team, to solicit or secure the contract described in this RFP, and that no agreement has been made to pay the Proposer or any member of its development team any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or execution of such contract. For breach or violation of this certification, the City shall have the right to annul any contract entered into with a Proposer as result of this RFP without liability, or in its discretion to deduct the contract price or consideration, or otherwise, recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

L. Gratuities

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City or its advisors for the purposes of influencing this selection. Any attempt to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

SECTION VII – STANDARD CONTRACT PROVISIONS

A. Contract Negotiation and Content

The submission of a proposal in response to this RFP constitutes the agreement of the Proposer that any contract resulting from this RFP will be prepared by the City. The submission of a proposal shall further constitute the agreement of the Proposer that it will not insist on the use of standard contract agreements, documents or forms, and that they waive any demand for the use of its standard contracts. Pursuant to the City Charter, the language of the contract to be executed will be drafted under the supervision of the City Attorney and shall be the controlling document.

B. Data Confidentiality

Except as specifically provided in the Contract, the Consultant or its subconsultants shall not divulge data to any third party without prior written consent of the City.

C. Insurance Requirements

The successful Proposer(s) shall procure and maintain required insurances until all of their obligations have been discharged, including any warranty periods under the future contracts are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Proposer, its agents, representatives, employees, subconsultant or subcontractor. Insurance requirement will be outlined within the contract that result from the selection of a successful proposal.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below:

A. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Aggregate</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Products – Completed Operations Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Personal and Advertising Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

B. Automobile Liability
Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract
Combined Single Limit (CSL) $1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

C. Worker's Compensation and Employers' Liability
Workers' Compensation Statutory
Employers' Liability
Each Accident $100,000
Disease – Each Employee $100,000
Disease – Policy Limit $500,000

Policy shall contain a waiver of subrogation against the City of Phoenix.

D. Professional Liability (Errors and Omissions Liability)
Each Claim $1,000,000
Annual Aggregate $2,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

E. Contractor's Pollution Liability (including Errors & Omissions)
For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.
Per Occurrence $1,000,000
General Aggregate $2,000,000

The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties.

The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from general contracting activities for which the Contractor is legally liable.

The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.

The policy shall be endorsed to include the following additional insured language: "The City of Phoenix
shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor”.

If the Scope of Services in the Contract requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to City of Phoenix, Purchasing Department, 251 W. Washington Street, 8th Floor, Phoenix, Arizona 85003 and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to City of Phoenix, Purchasing Department, 251 W. Washington Street, 8th Floor, Phoenix, Arizona 85003. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.

SUBCONTRACTORS: Contractors’ certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
D. **Indemnification**

The successful Proposer shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Proposer or any of its owners, officers, directors, agents, employees or subconsultants and subcontractors to the Proposers. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such Proposer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Proposer from and against any and all claims. It is agreed that Proposer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Incorporated into any contract that is entered into with the City will be the requirement that the Proposer, at its sole cost and expense, shall and does hereby indemnify, defend and hold the City harmless from and against any challenge, whether administrative, judicial or otherwise, by any person or entity, to the City's execution or performance under said contract, which indemnification shall survive the expiration or earlier termination of said contract.

E. **Bonding Requirements**

The Developer, at its own expense, will be required to secure a Performance and Payment Bond or Letter of Credit in conjunction with the LFG Purchase Agreement and with the Lease Agreement. Said Bonds shall remain in effect for the duration of the agreements. Bonds shall be executed by a surety company authorized to do business in the State of Arizona and listed in the current Federal Department of Treasury Circular 570.

**Transferability.** The bonds shall not be transferrable to any other party. In the case of a change in ownership or legal entity modifications, a new agreement and bonding shall be put into place at that time.

F. **Legal Worker Requirements**

The City is prohibited by A.R.S. § 41-4401 from awarding a contract to any Proposer who fails, or whose subconsultant or subcontractor fail, to comply with A.R.S. § 23-214(A). Therefore, Proposer agrees by submitting this proposal that:

1. Proposer and each subconsultant and subcontractor it uses warrants its compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).
2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the contract and is subject to penalties up to and including termination of the contract.
3. The City retains the legal right to inspect the employment papers of the Proposer or its subconsultants and subcontractors who work(s) on this contract to ensure that the Proposer or subconsultant and subcontractor are compliant with the warranty under Item 1.

G. **Lawful Presence Requirement**

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

H. **Background Screening Requirements and Criteria:**

A Standard Risk Background Screening shall be performed when the Contract Worker's work assignment will: (i) require a badge or key for access to City facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or (iii) allow unescorted access to City facilities
during normal and non-business hours. The Background Screening for this standard risk level shall include the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and shall include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker’s proposed date of hire.

I. Background Screening Applicable to all Subconsultant and Subcontractor Contracts

The Selected Proposer shall include the terms of required said background screening in all contracts and subcontracts for services furnished under this contract including, but not limited to, supervision and oversight services.

J. Materiality of Background Screening Requirements Indemnity

The Background Screening requirements of this Section are material to City’s entry into this Agreement and any breach of this Section by Contractor shall be deemed a material breach of the contract. In addition to the indemnity provisions set forth in this RFP, the Selected Proposer shall defend, indemnify and hold harmless the City for any and all Claims as defined in this RFP arising out of this Background Screening Section including, but not limited to, the disqualification of a worker by Selected Proposer or the City for failure to satisfy this Section.

K. Continuing Duty

Selected Proposer’s obligations and requirements that workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. The Selected Proposer shall notify the City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor’s compliance with this Section.

L. Selected Proposer’s Default; Liquidated Damages; Reservation of Remedies for Material Breach

The following is a summary of contract language regarding Selected Proposer’s default, liquidated damages and reservation of remedies for materials breach as included in the contract.

The Selected Proposer’s agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that The Selected Proposer’s failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, the Selected Proposer shall be liable for and shall pay to the City the sum of one thousand dollars ($1,000.00) for each breach of this Section by the Selected Proposer. The parties further agree that three (3) breaches arising out of any default by the Selected Proposer within a consecutive period of three (3) months or three (3) breaches of this Section by the Selected Proposer arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of the contract by the Selected Proposer and the City expressly reserves all of its rights, including, but not limited to, termination of the contract.

M. Applicable Law

Any and all disputes arising under any contract to be negotiated hereunder or out of the proposals herein called for shall be governed according to the laws of the State of Arizona, and the Proposer shall agree that the venue for any such action brought to enforce provisions of the contract shall be in the State of Arizona.

N. Organization Employment Disclaimer

Any contract entered into as the result of this RFP will not constitute, create, give rise to or otherwise recognize an agreement or relationship, partnership or formal business organization of any kind between the City and the Proposer, and the rights and obligations of the parties shall only be those expressly set forth therein. The Selected Proposer will be required to agree as part of any contract entered into as the result hereof, that no person supplied by it in the performance of the contract is an employee of the City, and further agree that no rights of the City’s Civil Service, Retirement or Personnel Rules accrue to any such persons. Any contracting party shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen’s compensation and occupational disease compensation insurance unemployment compensation, other benefits
and taxes and premiums appurtenant thereto concerning such persons provided by such party in the performance of the contract, and shall save and hold the City harmless with respect thereto.

O. Liquidated Damages Events

This Agreement provides for the payment of liquidated damages in certain circumstances of nonperformance, breach and default. Each Party agrees that the damaged Party's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged Party in the same economic position as it would have been had the circumstance not occurred. Such liquidated damages shall constitute the only damages payable by the nonperforming, breaching or defaulting Party, regardless of legal theory. Nothing in this subsection shall be construed to limit any non-damage remedies, including termination, also provided for herein with respect to any such nonperformance, breach or default. Except to the extent that Contractor is excused due to Uncontrollable Circumstances, Contractor will be liable for liquidated damages as provided herein for certain circumstances of nonperformance, breach and default. The City has the right to inspect the premises at any time to ensure Contractor’s compliance with its obligations under this Agreement. Contractor shall remedy any violation within 3 business days after receiving notice of such failure or violation. Contractor may challenge the imposition of such liquidated damages in writing within 10 business days of the assessment of the liquidated damage.

Notice of Violation (NOV). In addition to any other remedy available by law or equity to the City, the Parties expressly agree that the Contractor will be liable for and will pay to the City the sum of $5,000 for each notice of violation or enforcement citation (NOV) from a federal, state, county, city, agency, or administrative law, rule, regulation, ordinance or court order resulting from the Contractor’s acts, errors, or omissions in the performance of the Agreement. This sum is in addition to any penalty, fine, or fee imposed by a court of law or administrative agency related to the NOV, and in addition to the Contractor’s duty to defend and hold the City harmless for the Contractor’s acts, errors, or omissions in the performance of the Agreement. The Parties expressly agree that the sum fixed above is reasonable and approximates the actual anticipated loss to the City at the time and making of the agreement in the event that a NOV is issued to the Contractor as a result of the Contractor’s acts, errors or omissions in the performance of the Agreement. The Parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the actual impact to and damages incurred by the City, in the event that a NOV is levied on the Temporary Mulching and Compost Facility operation.

P. Suspension of Work

The City and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City of Phoenix. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

Q. Performance Interference

Contractor shall notify the department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within twenty-four (24) hours.

Department Contact: Chuck Hamstra, Deputy Public Works Director
200 W. Washington St., 6th Floor
Phoenix, AZ 85003
(602) 495-0496

R. Equipment/Safety

The Contractor shall be responsible for providing and for the placement of barricades, tarps, plastic, flag tape and other safety/traffic control equipment required to protect its employees, the public, surrounding areas, equipment and vehicles. The flow of vehicular traffic shall not be impeded at any time during this project. The safety of the Contractor’s employees and the public is of prime concern to the City, and the Contractor must take all necessary steps to assure proper safety during the performance of the Contractor.

S. Final Inspection and Approval

The Contractor will request the project manager to conduct a site inspection after the project is complete. The project manager will prepare a "punch-list" during the inspection and will forward a copy of the "punch-list" to the Contractor.
After the "punch-list" items have been corrected, the Contractor will request a final inspection with the project manager. Final project approval is contingent upon the project manager's final inspection and written approval.

**T. Industry Standards**

It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item(s) will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

The term "heavy duty" as used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality or capacity supplied with standard production item(s); and it shall be able to withstand unusual straining, exposure, temperature, wear and use.

The City of Phoenix reserves the right to waive minor variation(s) if in the opinion of the Equipment Management Administrator the basic unit meets the general intent of these specifications.

The complete equipment/material proposal shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

If the specifications stated herein for component items do not comply with legal requirements, the proposer(s) shall so notify the City prior to the bid opening date.

**U. Inspection of Records**

All books, accounts, reports, files and other records relating to the contract shall be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City.

**V. Affirmative Action**

Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any supplier/lessee in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

**W. Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be considered work for hire and the City shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the City requesting the issuance of this contract shall own (for and on behalf of the City) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the City. The Intellectual Property shall not be disclosed by...
Contractor or its subcontractor(s) to any other entity without the express written authorization of the City. If by operation of law, the Intellectual Property is not owned in its entirety by the City automatically upon its creation, then Contractor agrees to assign and hereby assigns to the City the ownership of the Intellectual Property. The Contractor agrees to take such further action and execute and deliver such further agreements and other instruments as the City may reasonably request to give effect to this section 3.8.

It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.

X. Health, Environmental and Safety Requirements

The Contractor’s products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract
- A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City shall have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City shall also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement.

Y. Compliance with Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether or not they are referred to by the City. Contractor agrees to permit City inspection of Contractor’s business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor’s acts.